

Lippincott IP

VIA CM/ECF

September 27, 2016

The Honorable Cathy L. Waldor
United States Magistrate Judge
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: Malibu Media, LLC v. John Doe subscriber assigned IP address
47.17.236.33, Case No. 2:15-cv-07334-WHW-CLW
Fed. R. Civ. P. 37(b)(2)(A)(v) Motion to Dismiss

Dear Judge Waldor:

On September 21, 2016 I wrote a letter to the Court on behalf of Defendant requesting permission to file a Motion to Dismiss under Fed. R. Civ. P. 37(b)(2)(A)(v) as sanction for plaintiff's repeated violations of the Court's orders. [Dkt 24]. Plaintiff's counsel, Patrick Cerillo, responded to my letter on September 26, 2016, essentially blaming the undersigned for plaintiff's most recent failure to abide an order from the Court. [Dkt 25].

Mr. Cerillo presents the novel theory that I am personally responsible for reminding plaintiff – a professional litigant – of its discovery obligations. Mr. Cerillo also has invented an obligation to meet and confer prior to my requesting the Court's permission to file the Motion to Dismiss under Fed. R. Civ. P. 37(b). Yet, Mr. Cerillo has conveniently ignored the very real requirement to seek an extension of time in writing prior to the expiration of the period sought to be extended, under L. Civ. R. 6.1. Plaintiff and its counsel act as though the federal and local rules do not apply to them.

Mr. Cerillo also blames the six week delay in serving plaintiff's discovery responses on the fact that his client "switched general counsel" in June. This excuse rings hollow because (i) two attorneys and two paralegals from his client's former general counsel now work for his client's new general counsel, (ii) plaintiff has filed 341 new cases in U.S. District Courts since June 1, 2016, and (iii) Mr. Cerillo filed 27 new cases in the District of New Jersey on August 29, 2016, the day before plaintiff's discovery responses in this case were due. Counsel has an ethical duty to meet his current obligations before incurring new ones.

Respectfully submitted,



Flann Lippincott

cc: Patrick J. Cerillo, Esq. via CM/ECF